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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 635**

**[Docket No. 180117042-8884-02]**

**RTID 0648-XA483**

**Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; quota transfer.

**SUMMARY:** NMFS is transferring 111.6 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category. This action is intended to account for an accrued overharvest of 63.3 mt from previous time period subquotas, and to provide further opportunities for General category fishermen to participate in the September General category fishery, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action would affect Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

**DATES:** Effective *[insert date of filing for public inspection with the Office of the Federal Register]* through September 30, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin or Nicholas Velseboer, 978-281-9260, or Larry Redd, 301-427-8503.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The current baseline General and Reserve category quotas are 555.7 mt and 29.5 mt, respectively. See § 635.27(a). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a “subquota” or portion of the annual General category quota. The baseline subquotas for each time period are as follows: 29.5 mt for January; 277.9 mt for June through August; 147.3 mt for September; 72.2 mt for October through November; and 28.9 mt for December. Any unused General category quota rolls forward from one time period to the next and is available for use in subsequent time periods. At the time of drafting this notice, NMFS has taken four actions that resulted in adjustments to the General and Reserve category quotas, resulting in currently adjusted quotas of 113 mt of quota for the Reserve category, 100 mt for the General category January through March

2020 subquota period, and 9.4 mt for the December 2020 subquota period (85 FR 17, January 2, 2020; 85 FR 6828, February 6, 2020; 85 FR 43148, July 16, 2020).

### **Transfer of 111.6 mt from the Reserve Category to the General Category**

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories, after considering regulatory determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These considerations include, but are not limited to, the following:

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by tuna dealers provides NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

NMFS also considered the catches of the General category quota to date (including during the summer/fall and winter fisheries in the last several years), and the likelihood of closure of that segment of the fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)). Preliminary landings data as of September 15, 2020, indicate that the General category landed a cumulative total of 441.2 mt through August 31, which exceeds the cumulative adjusted quota available through August 31, *i.e.*, 377.9 mt. Preliminary September landings as of September 15, 2020, are 114.2 mt, which represents 78 percent of the baseline September subquota (147.3 mt). At the time of

drafting of this inseason action, the General category subquota has not yet been exceeded, but without a quota transfer at this time, NMFS would likely close the General category fishery shortly, and participants would have to stop bluefin tuna fishing activities while commercial-sized bluefin tuna remain available in the areas where General category permitted vessels operate at this time of year. Transferring 111.6 mt of quota from the Reserve category would account for 63.3 mt of accrued overharvest from the prior time periods and result in an additional 48.3 mt being available for the September 2020 subquota period after, thus effectively providing limited additional opportunities to harvest the U.S. bluefin tuna quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the particular category quota (here, the General category) to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors, such as the restrictions that some dealers placed on their purchases of BFT from General category participants this year. A portion of the transferred quota covers the 63.3-mt overharvest in the category to date, and NMFS anticipates that General category participants will be able to harvest the remaining 48.3 mt of transferred BFT quota by the end of the subquota time period. In the unlikely event that any of this quota is unused by September 30, such quota will roll forward to the next subperiod within the calendar year (*i.e.*, to the October through November period), and NMFS anticipates that it would be used before the end of the fishing year. NMFS also anticipates that some underharvest of the 2019 adjusted U.S. BFT quota will be carried

forward to 2020 and placed in the Reserve category, in accordance with the regulations. Thus, this quota transfer would allow fishermen to take advantage of the availability of fish on the fishing grounds, and provide a reasonable opportunity to harvest the full U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the bluefin tuna fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2020 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS will need to account for 2020 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with the current quotas, which were established and analyzed in the 2018 BFT quota final rule (83 FR 51391, October 11, 2018), and with objectives of the 2006 Consolidated HMS FMP and amendments and is not expected to negatively impact stock health or to affect the stock in ways not already analyzed in those documents. Another principal consideration is the objective of providing opportunities to harvest the full annual U.S. BFT quota without exceeding it based on the goals of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest their full BFT quota allocations (related to § 635.27(a)(8)(x)).

Specific to the General category, this includes providing opportunity equitably across all time periods.

Based on the considerations above, NMFS is transferring 111.6 mt from the Reserve category to the General category. Of this amount, 63.3 mt accounts for preliminary overharvest of the January through March and June through August time period subquotas, and 48.3 mt is added to the September subquota. Therefore, NMFS adjusts the General category September 2020 subquota to 195.6 mt after accounting for the 63.3 mt of overharvest through for the prior 2020 time periods, and adjusts the Reserve category quota to 1.4 mt, the amount of Reserve category quota obligated for scientific research. Again, NMFS anticipates that some underharvest (*i.e.*, 127.3 mt) of the 2019 adjusted U.S. BFT quota will be carried forward to 2020 and placed in the Reserve category, in accordance with the regulations, in the next few weeks. The General category fishery will remain open until September 30, 2020, or until the adjusted General category quota is reached, whichever comes first.

### **Monitoring and Reporting**

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General and HMS Charter/Headboat category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by

accessing [hmspermits.noaa.gov](https://hmspermits.noaa.gov) or by using the HMS Catch Reporting app, or calling (888) 872-8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates, NMFS may determine that additional action (*e.g.*, quota adjustment, daily retention limit adjustment, or closure) is necessary to enhance scientific data collection from, and fishing opportunities in, all geographic areas, and to ensure all available subquotas are not exceeded. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281-9260, or access [hmspermits.noaa.gov](https://hmspermits.noaa.gov), for updates on quota monitoring and inseason adjustments.

### **Classification**

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 635, which was issued pursuant to section 304(c), and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer for the September 2020 time period is also

contrary to the public interest as such a delay would likely result in closure of the General category fishery when the baseline quota is met and the need to re-open the fishery, with attendant administrative costs and costs to the fishery. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. This action does not raise conservation and management concerns. Transferring quota from the Reserve category to the General category does not affect the overall U.S. BFT quota, and available data shows the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota.



NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 17, 2020.

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Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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